

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 05-0166
Withholding Tax
Responsible Officer
For the Tax Period 1995-1996

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ISSUE

1. Withholding Tax-Responsible Officer Liability

Authority: IC 6-8.1-5-1(b), IC 6-3-4-8(g).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

STATEMENT OF FACTS

The taxpayer was an employee of a corporation that did not remit the proper amount of withholding taxes during the tax period of 1995-1996. The Indiana Department of Revenue assessed the unpaid withholding taxes, interest, and penalty against the taxpayer as a responsible person of that corporation. The taxpayer protested the assessment of tax and a hearing was held.

1. Withholding Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(g), which provides that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The taxpayer produced substantial documentation that he had no control over the financial activities of the corporation. Therefore, he had no duty to collect and remit withholding taxes to the state. He is not personally responsible for the payment of the corporate withholding tax liabilities.

Finding

The taxpayer's protest is sustained.

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